

**STATE OF NORTH CAROLINA**

**EMPLOYMENT AGREEMENT**

**COUNTY OF CUMBERLAND**

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF FAYETTEVILLE, a North Carolina municipal corporation (the "CITY"), by and through its City Council (the "EMPLOYER"), and DOUGLAS J. HEWETT ("CITY MANAGER" or "MANAGER"). This Agreement shall be effective as of October 4th, 2017.

**WITNESSETH:**

WHEREAS, CITY desires to employ the services of said Douglas J. Hewett ("Hewett") as CITY MANAGER of the City of Fayetteville, as provided for in the General Statutes of the State of North Carolina; and

WHEREAS, it is the desire of EMPLOYER to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said CITY MANAGER; and

WHEREAS, it is the desire of the EMPLOYER to (1) secure and retain the services of CITY MANAGER, and to provide inducement for him to remain in such employment; (2) to make possible full work productivity and independence by assuring CITY MANAGER's morale and peace of mind with respect to future security; and (3) to provide a just means for terminating the CITY MANAGER's services at such time that the EMPLOYER may desire to terminate his employ; and

WHEREAS, Hewett desires to accept employment as CITY MANAGER of Fayetteville, North Carolina, on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

**SECTION 1. POWERS AND DUTIES OF THE CITY MANAGER**

The EMPLOYER hereby agrees to employ Hewett as CITY MANAGER of the City of Fayetteville to perform the functions and duties specified in the CITY Charter and the laws of the State of North Carolina, and to perform other legally permissible and proper duties and functions as the EMPLOYER shall from time to time assign, subject to this Agreement. Hewett accepts such employment and agrees to serve as CITY MANAGER as provided in this Agreement.

The CITY MANAGER agrees that he shall remain in the exclusive employ of the EMPLOYER and shall not become employed by any other EMPLOYER or self-employed while serving as CITY MANAGER. The term "employed" however shall not be construed to include occasional writing or speaking for which an honorarium is provided. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the EMPLOYER or interfere with his duties as CITY MANAGER.

## SECTION 2. SALARY AND BENEFITS

A. **Salary.** EMPLOYER agrees to pay CITY MANAGER for his services rendered pursuant hereto as CITY MANAGER an annual base salary of One Hundred Ninety-Five Thousand and 00/100 Dollars (\$195,000.00) ("Base Salary") payable in installments at the same time as other employees of EMPLOYER are paid.

The EMPLOYER shall review the performance of the CITY MANAGER no later than September 30th of each year and EMPLOYER may increase the annual Base Salary and all other benefits of CITY MANAGER in such amounts and to such an extent as EMPLOYER may determine is desirable, either on the basis of an annual performance review of CITY MANAGER or at any other time deemed appropriate by the EMPLOYER. The EMPLOYER may also award the CITY MANAGER a bonus as set forth in Attachment A which may be revised and changed during each fiscal year.

B. **Residency Requirement.** The EMPLOYER and the CITY MANAGER agree that the CITY MANAGER shall maintain his principal residence within the City of Fayetteville during the time period of his employment.

C. **Retirement.** The CITY MANAGER shall be covered and governed by the same retirement system as all other non-public safety employees of EMPLOYER. Calculations for retirement contributions shall include all compensation normally reportable to the retirement system.

D. **Insurance.** The CITY MANAGER shall be covered by the same health and dental plans as all other employees of EMPLOYER.

E. **Vacation, Sick Leave, Holidays.** CITY MANAGER shall be entitled to earn 160 hours of vacation leave per calendar year. Vacation leave will have a maximum accrual of 160 hours in year one. Any vacation leave accruals in excess of the allowable maximum accumulation will be transferred to the CITY MANAGER's sick leave accrual at the end of each calendar year. The CITY MANAGER shall accrue 12 sick leave days per year, and the CITY MANAGER shall further be entitled to transfer the balance of his current sick leave accrued to the fullest extent allowed by applicable law. The CITY MANAGER shall be entitled to 11 holidays per year on the same holiday schedule as other CITY employees.

F. **Deferred Compensation.** The EMPLOYER agrees to pay CITY MANAGER annual deferred compensation of five percent (5%) of a sum equal to CITY MANAGER's annual base salary but excluding any bonus payment, executive compensation, payment for unused vacation, and any other compensation not referenced herein. EMPLOYER shall pay the deferred compensation to an I.R.C. Code Section 401(a) plan designated by EMPLOYER.

G. **Dues and Subscriptions.** EMPLOYER agrees to budget for and to pay the reasonable professional dues, subscriptions, travel and subsistence expenses of the CITY MANAGER for professional participation and travel, meetings and occasions adequate to continue professional development of CITY MANAGER and to adequately pursue necessary official and other functions for the CITY.

I. **Other Expenses.** EMPLOYER recognizes that certain expenses of a non-personal and job-affiliated nature will be incurred by the CITY MANAGER and hereby agrees to reimburse or pay such reasonable expenses as provided in the City of Fayetteville Purchasing Manual and Procurement Card Policy #312.

J. **Other Benefits.** In addition to the benefits enumerated specifically herein for the CITY MANAGER, all provisions of the CITY Charter, ordinances, and rules and regulations of EMPLOYER relating to fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to the CITY MANAGER as they would to all other employees of EMPLOYER.

### **SECTION 3. TERMINATION AND FINAL COMPENSATION**

A. The CITY MANAGER shall serve at the pleasure of the EMPLOYER. The EMPLOYER may terminate this Agreement and the CITY MANAGER's employment with the CITY at any time, for any reason or for no reason.

B. **Severance.** Should a majority of the entire City Council vote to terminate the services of the CITY MANAGER without "just cause" as defined herein, the CITY MANAGER shall be paid (1) any accrued and unpaid salary prior to the date of termination; and (2) any accrued and unused vacation leave, subject to the maximum accrual as set forth herein (i.e., any vacation leave payout shall be the lesser of the then accrued vacation leave balance or 160 hours), (3) a lump sum severance payment equal to 6 months of his then current Base Salary and (4) all health benefits for the CITY MANAGER shall continue in full force and coverage at the CITY's expense for a period of six months or until similar coverage is provided to the CITY MANAGER by subsequent employment (and is in full force and effect), whichever comes first. Said continuation of group health insurance coverage shall be in addition to any protection afforded the CITY MANAGER by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin on a date all coverage extended under the final compensation provisions herein expires. No sick pay or other accrued leave shall be paid at termination

As consideration for the above referenced Severance Payment, the CITY MANAGER shall, prior to receipt thereof, execute and deliver to the CITY a general release of the CITY and its City Council members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release. Such release shall be in a form acceptable to the CITY.

C. In the event the CITY MANAGER is terminated for "just cause", the CITY shall have no obligation to pay any Severance Payment amounts as outlined above. For purposes of this Agreement, "just cause" is defined and limited for purposes of this Agreement to any of the following:

1. Misfeasance, malfeasance, and/or nonfeasance in performance of the CITY MANAGER's duties and responsibilities.
2. Charge, conviction, or a plea of guilty or no contest to a misdemeanor or felony crime, whether or not adjudication is withheld.

3. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
4. Violation of any substantive CITY policy, rule, or regulation, which would subject any other CITY employee to termination.
5. The commission of any fraudulent act against the interest of the CITY.
6. The commission of any act which involves moral turpitude, or which causes the CITY disrepute.
7. Violation of the International City/County Management Association Code of Ethics.
8. Any other act of a similar nature of the same or greater seriousness.

D. In the event the City Council, at any time during the employment term, reduces the salary or other benefits of the CITY MANAGER, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time CITY employees, or in the event the CITY refuses to comply with any other material provision of this Agreement benefiting the CITY MANAGER, the CITY MANAGER may at his option, consider such violation as termination "without cause" as of the date of such reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the Base Salary in effect prior to the reduction or refusal.

#### **SECTION 4. CONFLICT OF INTEREST PROHIBITION**

It is further understood and agreed that because of the duties of the CITY MANAGER within and on behalf of the EMPLOYER and its citizenry, the CITY MANAGER shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or share-holder, invest or participate in any business venture conducting business in the corporate limits of the City of Fayetteville, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the EMPLOYER. For and during the term of this Agreement, EMPLOYEE further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Fayetteville, without the prior written consent of the EMPLOYER.

#### **SECTION 5. GENERAL PROVISIONS**

A. The Chief Financial Officer (or other designated employee) is hereby authorized to disburse funds as needed to fulfill all provisions of this Agreement, upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

B. The text herein shall constitute the entire Agreement between the parties.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the CITY MANAGER.

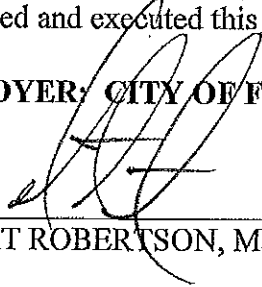
D. This Agreement shall become effective upon execution by the Mayor of the City of Fayetteville, and by Hewett, City Manager, and subject to the approval of the City Council and pre-audit certification.

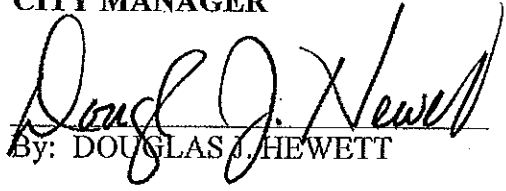
E. If any provisions, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect. EMPLOYER and CITY MANAGER further agree to revise any provisions or portions held unconstitutional, invalid, or unenforceable consistent with the intent herein.

IN WITNESS THEREOF, the City of Fayetteville has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and the CITY MANAGER has signed and executed this Agreement, both in duplicate, the day and year first written above.

EMPLOYER: CITY OF FAYETTEVILLE

CITY MANAGER

  
By: NAT ROBERTSON, Mayor

  
By: DOUGLAS J. HEWETT

ATTEST:

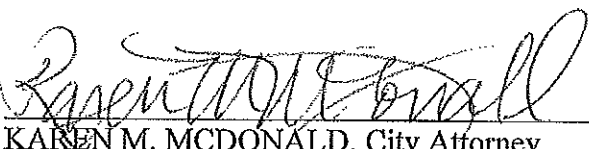
  
PAMELA J. MEGILL, City Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

APPROVED AS TO FORM:

  
CHERYL SPIVEY, Chief Financial Officer

  
KAREN M. MCDONALD, City Attorney

## ATTACHMENT A

OPPORTUNITY FOR ONE-TIME BONUSES FOR 2017-2018		
Opportunity	Goal	Bonus
Annual property crime (M)	> 3% reduction	\$1,500.00
Each parks projects (M)	Finished on time/on budget	\$1,000.00 each (13)
# Matthew dam projects (M)	Finished on time/on budget	\$1,000.00 each (2/7)
Improved fleet maintenance (M)	< downtime & > compliance	\$2,500.00
Retain current accreditations (M)	All Departments	\$1,000.00
Performance review (M)	Overall score of > 4 (1-5 scale)	\$5,000.00
Baseball stadium	Finished on time/on budget	\$5,000.00
Inspections Department (M)	Exceed set goal times for inspecting	\$1,500.00
Permitting Department (M)	Exceed set goal times for issuing	\$2,500.00
Code Enforcement (O)	Fewer complaints to Mayor & Council	\$1,000.00
Airport Construction (M)	Finished on time/on budget	\$5,000.00
Total Possible One-Time Bonus Opportunities		\$35,000.00 +

(M) = Measured / (O) = Objective